IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 130 of 2006

Date of decision November 19, 2009

New India Assurance Company ….Appellant

Versus

Nasar Deen & others. ….Respondents

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?[1] No.

For the Appellant :	Shri B.M. Chauhan, Advocate.
For Respondent No.1:	Shri O.P. Sharma, Advocate
For Respondents No. 2 & 3:	Shri Ajay Sharma, Advocate.
For Respondent No. 4:	Shri A.K. Vashishta, Advocate vice Shri Rajinder Singh Kanwar, Advocate.
For Respondent No.5:	Shri Sanjeev Kuthiala, Advocate.

Dev Darshan Sud, J.

This appeal has been filed against the judgment and award of the learned Motor Accident Claims Tribunal, Hamirpur dated 27th January, 2006. Petition was instituted by Nasar Deen, claiming damages for the injuries suffered by him in an accident between bus No. HP-22-5354 and jeep No. HP-67-3333. The learned Tribunal, on the conspectus of the evidence and medical record, which included the treatment of the petitioner at Post Graduate Institute of Medical Education and Research, Chandigarh, awarded a sum of Rs. 2,83,000/- on account of injuries suffered as also the medical expenses. The claimant was

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[1] ***Whether reports of Local Papers may be allowed to see the judgment? Yes.***

aged 37 years at the time of accident. He had pleaded that he was earning Rs. 200/- per day and that after the accident he had lost three fingers of his left hand which were amputated and multiple injuries on his face which had been disfigured. The claimant also lost sight in his left eye. Three fingers had to be grafted by plastic surgery.

In appeal, learned counsel appearing for the appellant-Insurance Company submits that it was not liable to pay compensation as the Insurance Policy Ext.R4 does not cover the risk of the vehicle in question. Learned counsel submits that on issue No. 5, the learned Tribunal was wrong in holding that the Insurance Company was liable to meet the liability attributed to the jeep driver. He submits that there was ample evidence on record to establish that the injured was a gratuitous passenger.

This submission needs to be rejected as I find from the record i.e. Ext.R4, which is the insurance cover note, that it covers the liability for injuries/death of three persons. No evidence has been led by the Insurance Company, respondent No.5. On 26.12.2005, the case was taken up for evidence on behalf of the respondents, but no evidence was recorded as process fee and diet money had not been deposited. Again the case was adjourned for 16th January, 2006 and on that day, the statements of respondent No.2 i.e. Hans Raj and respondent No.4 i.e. Ajit Singh, both drivers of offending vehicles, were recorded. The order records:

> ***"Statement of respondent No.2 and 4 recorded and closed the evidence on behalf of all respondents. The case is complete. Now put up on 24.1.2006 for arguments."***

Even looking at the evidence of these two witnesses i.e. respondent No. 2 and 4, there is nothing in their statements which exonerates the Insurance Company. Taking the policy as it is, which is produced on record, the exoneration of the liability of the Insurance Company-appellant is not established.

It is strange that the Company has not led any evidence on the issue, which had to be established by it. Thus, there is no merit in this appeal, which is accordingly dismissed. There shall be no order as to costs.

November 19, 2009 **(Dev Darshan Sud)**
(ms) **Judge**